

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate Spectrum)	
at 2 GHz for Use by the Mobile-Satellite Service)	

To: The Commission

**OPPOSITION TO MOTION FOR STAY OF
MANDATORY NEGOTIATION PERIOD**

The Boeing Company ("Boeing"), by its attorneys and pursuant to section 1.45(d) of the Commission's rules, opposes the Motion for Stay of Mandatory Negotiation Period ("Motion") filed by The National Association of Broadcasters' ("NAB") on October 22, 2001 in the above-captioned proceeding.¹ Because NAB's Motion constitutes nothing more than an untimely filed petition for reconsideration of the Commission's *2 GHz Relocation Order*,² it is procedurally defective and must be dismissed.³

¹ Motion for Stay of Mandatory Negotiation Period of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., ET Docket No. 95-18 (filed Oct. 22, 2001) ("*Motion*").

² *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz by the Mobile Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315 (2000) ("*2 GHz Relocation Order*").

³ Even though NAB's Motion constitutes a *de facto* petition for reconsideration, Boeing files this Opposition within the seven-day filing period for requests for stay under section 1.45(d) of the Commission rules out of an abundance of caution and for procedural purposes only.

In the *2 GHz Relocation Order* the Commission established a two-year mandatory negotiation period between Mobile Satellite Service (“MSS”) licensees and Broadcast Auxiliary Service (“BAS”) incumbents in order to allocate relocation costs in the 1990-2008 MHz band in the thirty largest television markets.⁴ In the same order, the Commission also established that this two-year period would begin to run thirty days after publication of the rule in the Federal Register.⁵ As a result, the two-year mandatory negotiation period began to run on September 6, 2000.

Now, more than a year after the rule became effective and the two-year period has begun to run, NAB is asking the Commission to reconsider this structured plan. Although packaged as a Motion for Stay, NAB’s request is really nothing more than an untimely filed petition for reconsideration of the underlying *2 GHz Relocation Order*. NAB is not seeking to stay the effective date of a rule pending resolution of a separately filed petition for reconsideration (as is the accepted use of Motions for Stay),⁶ but is rather using the Motion to request a change to an integral component of the rule itself.

The rule established by the Commission in the *2 GHz Relocation Order* sets out a two-year mandatory negotiation period commencing thirty days after publication of the *2 GHz Relocation Order* in the Federal Register. This commencement date for mandatory negotiations is an integral part of the Commission’s plan to provide early access to the 2 GHz band by MSS licensees that cannot be altered without negatively affecting the overall timetable for

⁴ See *2 GHz Relocation Order*, 15 FCC Rcd at 12331.

⁵ See *id.*

⁶ See 47 C.F.R. § 1.429(k) (“[U]pon good cause shown, the Commission will stay the effective date of a rule pending a decision on a petition for reconsideration.”).

implementation of 2 GHz MSS systems and the reasonable expectation of 2 GHz MSS licensees to rely on established rules while building out their systems. Thus, NAB's request seeks much more than the typical preservation of the status quo during the separate reconsideration of a Commission rule.⁷ Rather, NAB's request constitutes a *de facto* attempt to undo the structured plan for reallocation of the 2 GHz band already set forth in the Commission's *2 GHz Relocation Order*.

This request for reconsideration comes too late. The Commission's rules clearly state that any petition for reconsideration must be filed within thirty days from the date of public notice of such action, and that no supplement to a petition for reconsideration filed after the expiration of the thirty-day period will be considered, except upon leave by the Commission.⁸ Accordingly, the time for filing a petition for reconsideration expired well over a year ago. Although NAB filed a petition for reconsideration of other aspects of the *2 GHz Relocation Order*,⁹ it did not seek reconsideration of the two-year mandatory negotiation period, and it is too late to supplement its petition without special leave of the Commission (which was not requested). Furthermore, the inherent implausibility of the NAB Motion is shown by the fact that NAB is seeking to stay an order *that has already been in effect for more than a year*. Even if the Commission were not to recognize NAB's Motion for what it really is (a cloaked petition for reconsideration), the Commission cannot logically "stay" an order that is already in effect.

⁷ *See id.*

⁸ *See* 47 C.F.R. § 1.429(d).

⁹ *See* Petition for Partial Reconsideration of the National Association of Broadcasters and the Association for Maximum Service Television, ET Docket No. 95-19 (filed Sept. 6, 2000).

In conclusion, NAB's *de facto* request for reconsideration of the two-year mandatory negotiation period is untimely and procedurally defective. The Commission must dismiss the Motion to preserve the integrity of its rules and the reasonable expectation of 2 GHz MSS licensees to rely on established Commission rules while building out their systems.

Respectfully submitted,

THE BOEING COMPANY

By: /s/ David A. Nall

R. Craig Holman
Office of the Group Counsel
New Ventures Group
The Boeing Company
P.O. Box 3999, M/S 84-10
Seattle, Washington 98124-2499
(253) 773-9645

David A. Nall
Bruce A. Olcott
Stephen J. Duall
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
(202) 626-6600

Its Attorneys

October 29, 2001